THE HON'BLE MR JUSTICE B. SUDERSHAN REDDY

and

THE HON'BLE MR JUSTICE RAMESH RANGANATHAN

WRIT PETITION NO : 13736 of 2005

Dated 23/08/2005

Between:

M/s Nava Bharat Enterprises Limited A Public Limited Company, having its registered Office at 6-3-654/A, Somajiguda, Hyderabad rep by its Director Dr.A.Suryanarayana, S/o.Sri A.Rama Rao

..... PETITIONER

AND

1 Superintendent of Customs and Central Excise Gudur Range,

15/132, Ranipet, 4th Lane, Gudur.

2 Commissioner of Customs and Central Excise P.B.No.331, CR

Buildings, Kanavari Thota, Guntur.

3 The Official Liquidator, Kendriya Sadan, 3-5-398, C.P.W.D.

Building, Sultan Bazar, Koti, Hyderabad

R3 is impleaded as per court order dt. 3-8-2005

.....RESPONDENTS

THE HON'BLE MR JUSTICE B. SUDERSHAN REDDY

and

THE HON'BLE MR JUSTICE RAMESH RANGANATHAN

WRIT PETITION NO : 13736 of 2005

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ORAL ORDER: (per BRSR,J)

The petitioner invokes the extraordinary jurisdiction of this Court under Article

226 of the Constitution of India with a prayer to issue a writ of Mandamus and declare the orders in original bearing Nos.07/2003 and 08/2003 dated 18.7.2003 and 30.7.2003 respectively passed by the 2nd respondent as illegal and contrary to the provisions of the Companies Act, 1956.

The petitioner claims to have established aqua products division in Gudur as a 100% export oriented unit which was approved by the Government of India, Ministry of Industry, Department of Industrial Development, New Delhi. The aqua farm was set up in Mommidi village, Chillakur mandal of Nellore District for the production of prawn and prawn seed pursuant to a separate letter of permission issued by the authorities under which the petitioner had been permitted to produce 504 MTS prawn per year in its unit for a period of 10 years with a value of addition of 63%. The petitioner was permitted to import capital goods worth Rs.519.80 lakhs. The rest of the details are not required to be noticed for the purpose of disposal of this writ petition, except to note that the petitioner had procured duty free imported goods under notification No.196/94-Customs dated 8.12.2004 as amended from time to time.

It is stated that the petitioner faced serious problems right from the very inception due to various reasons beyond its control. The petitioner could not continue with its production activity in the packaging division which was simultaneously established in Guntur as a 100% expert oriented unit for manufacture and export of Mono/Duel Fluted Double Wall Fibre Board Containers, mainly to cater to the requirements of the Aqua division which was also 100% export oriented unit.

That a creditor of the petitioner instituted CP No.96 of 2001 in this Court and obtained an ex parte order of winding up on 24.12.2002. The Court had also appointed the Official Liquidator as the Liquidator of the said company. The Official Liquidator took possession of the registered office premises of the company, but however, could not take possession of the company's packaging unit at Guntur as the same was under the custody of the Debts Recovery Tribunal. The petitioner-company filed CA Nos.180 and 181 of 2003 in this Court to set aside the ex parte

order of winding up and to stay all further proceedings pursuant to the winding up orders. This Court vide order dated 26.2.2003 granted interim stay of taking possession of the assets of the company by the Official Liquidator. The stay was extended till 24.7.2003 on which date this Court vacated the interim order. The Official Liquidator was thus precluded from taking into his control all the affairs of the petitioner company.

The fact remains that during the period from 24.12.2002 to 21.6.2004 the Official Liquidator continued as the Liquidator of the said company, though there is some dispute as to whether the actual physical possession of the assets and properties of the company were taken over by the Official Liquidator. It is unnecessary to enter into those aspects at this stage in this writ petition. The present writ petition is directed against the orders dated 18.7.2003 and 30.7.2003. The order dated 18.7.2003 directs the confiscation of the imported goods procured duty free while giving option to the petitioner to redeem the same on payment of Redemption Fine of Rs.49,00,000/- within one month of receipt of the order. There is a further direction of confiscation of indigenous goods valued at 73,06,225/- with a similar option to the petitioner to redeem the same on payment of redemption fine of Rs.73,00,000/-. The demand of customs duty of Rs.22,20,149/- on the import of goods has been confirmed together with confirmation of demand of central excise duty of Rs.12,15,243/- on the indigenous goods valued at Rs.82,85,317/-. The petitioner has been directed to pay the interest also. The order dated 13.7.2005 is to the following effect.

> "I) I hereby order payment of the Customs duty of Rs.2,54,91,236/- (Rupees Two Crore Fifty Four Lakhs Ninty One Thousand Two Hundred and Thirty Six only) by M/s NBEL, under Section 72 of the Customs Act, 1962 and the conditions of Notification No.13/81-Cus. Dated 9.2.1981 as amended read with Notification NO.53/97-Cus DATED 3.6.1997 as amended and also as per the terms and conditions of the aforesaid Bond dated 26.12.1994 for Rs.34 crores;
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> ii) I hereby order payment of the Central Excise duty of Rs.6,16,745/- (Rupees Six Lakhs Sixteen Thousand Seven Hundred and Forty Five only) by M/s. NBEL, under rule 196 of the Central Excise Rules, 1944 read with Section 72 of the Customs Act, 1962 and as per the conditions of the Notification No.1/95-CE dated 4.1.1995 as amended read with the terms and

conditions of three numbers of the Bonds, viz., the Bond dated 26.12.1994 for Rs.34 crores, the Bonds (2 Nos) both dated 26.9.1997 for Rs.20 lakhs and Rs.96.15 lakhs;

III) I hereby order payment of interest on the aforesaid Customs duty at (i) above by M/s. NBEL, under Section 61 of the Customs Act, 1962 and as per the conditions of the Notification NO.13/81-Cus. Dated 9.2.1981, as amended/No.53/97-Cus. Dated 3.6.1997 as amended and in terms of the conditions of three numbers of the Bonds, viz., the Bond dated 26.12.1994 for Rs.34 crores, the Bonds (2 Nos.) both dated 26.9.1997 for Rs.20 lakhs and Rs.96.15 lakhs;

IV) I hereby order payment of interest on the Central Excise duty at (ii) above by M/s NBEL, under Section 61 of the Customs Act, 1962 and as per the conditions of the Notification No.1/95-CE dated 4.1.1995 as amended and in terms of the conditions of the three numbers of the Bonds, viz., the Bond dated 26.12.1994 for Rs.34 crores, the Bonds (2 Nos) both dated 26.9.1997 for Rs.20 lakhs and Rs.96.15 lakhs;

V) I hereby order confiscation of the imported goods totally valued at Rs.5,87,61,222/- as detailed supra, under Section 111(o) of the Customs Act, 1962. However, under Section 125 of the Customs Act, 1962, I give the owner of the goods, the option to redeem the same on payment of redemption fine of Rs.2,55,00,000/- (Rupees Two Crores Fifty Five Lakhs only) within 1 (one) month of receipt of this order.

VI) I hereby order confiscation of the indigenous goods totally valued at Rs.60,77,024/- as detailed supra, under Rule 196 of the Central Excise Rules, 1944. However, under Section 34 of the Central Excise Act, 1944, I give the owner of the goods, the option to redeem the same on payment of redemption fine of Rs.6,16,000/- (Rupees Six Lakhs Sixteen Thousand only) within 1 (one) month of receipt of this order.

VII) I hereby impose penalty of R.1,27,00,000/- (Rupees One Crore Twenty Seven Lakhs only) on M/s. NBEL, under Section 112 of the Customs Act, 1962;

VIII) I hereby impose penalty of Rs.6,00,000/- (Rupees Six Lakhs only) on M/s. NBEL, under Rule 173Q of the Central Excise rules, 1944;

IX) I hereby order payment of interest, rent and other charges as may be determined by the proper officer, in respect of the re-warehoused goods, by M/s. NBEL, under Sections 61 and 72 of the Customs Act, 1962;

X) I hereby cancel the Private Bonded Warehouse Licence No.1/94 (Cus) granted to M/s. NBEL, under Section 58 of the Customs Act, 1962; and

XI) I hereby order enforcement of the conditions of the Bond dated 26.12.1994 for Rs.34 crores, and the 2 Nos. of Bond dated 26.9.1997 for Rs.20 lakhs and the Bond dated 26.9.1997 for Rs.96.15 lakhs towards the above Customs & Central Excise duty amounts interest, penalties, fines, rents and other charges as detailed above."

In this writ petition, both the orders are challenged on the ground that the same have been passed without serving any show cause notice upon the petitioner. The order in original speaks about the notice of personal hearing dated 17.6.2003, 19.6.2003 and 25.6.2003, which obviously could not have been served on the petitioner. In the reply submitted by the Official Liquidator, it is stated that the notices were served upon the Official Liquidator to which a reply was served duly informing the authorities about the pendency of the company petition. The Official Liquidator obviously did not raise any substantial objections as to the levy and collection of the duties as proposed in the show cause notice. The fact remains neither the Official Liquidator nor the petitioner company preferred any objections in the peculiar facts and circumstances noticed hereinabove.

That after the disposal of the applications filed by the petitioners, the Official Liquidator handed over the possession of the factory to the petitioner about which there is no dispute. The petitioner is stated to have received a communication communicating the impugned orders on 6.5.2005 duly informing the petitioner that it has been assessed to customs duty, central excise duty, penalty and also redemption fine and various other amounts and as well as the interest.

In this writ petition, it is contended that the orders are nullity and cannot be given effect to since the same have been passed without any notice to the petitioner. We are not inclined to examine this question in detail and express our view as to whether the notices admittedly served upon the Official Liquidator are sufficient and meet the requirements in law. The question whether the actual physical possession of the assets and properties as such were handed over to the Official Liquidator is also another aspect that may have to be gone into for the purpose of deciding as to

whether the impugned orders are nullity in law. These questions can as well be gone into in appeal by the Tribunal. There are no legal impediments for the petitioner to file the appeal against the impugned orders challenging the legality, propriety and correctness of the impugned orders. The petitioner is entitled to raise all the grounds that are raised in the writ petition challenging the impugned orders including any other ground as may be available to it in law, in which event the tribunal is bound to go into all the issues to be raised by the petitioner.

In such view of the matter, we are not inclined to grant any relief to the petitioner in this writ petition but grant liberty to the petitioner to prefer an appeal before the Tribunal which shall be duly considered on its own merits.

The Writ Petition is accordingly dismissed.

(B.SUDERSHAN REDDY,J)

dated 23..08..2005

(RAMESH RANGANATHAN,J)

msv/ks